

Title	Default Judgment (amend Cal. Rules of Court, rule 388; revise form 982(a)(6))
Summary	Amended rule 388 would allow optional form UD-116 to be filed when a party seeks a default court judgment on declarations in an unlawful detainer case. Revised form 982(a)(6), the <i>Request for Entry of Default</i> , would (1) require that the memorandum of costs (item 7) be completed only when a money judgment is requested and (2) reflect the new title of Servicemembers Civil Relief Act in the declaration of nonmilitary status (item 8).
Source	Judicial Council’s Civil and Small Claims Advisory Committee
Staff	Cara Vonk, 415-865-7669, cara.vonk@jud.ca.gov
Discussion	<p>The Judicial Council approved an optional a new form, <i>Declaration for Default Judgment By Court (Unlawful Detainer—Code Civil Proc., §585(d))</i> (form UD-116), effective July 1, 2003. This declaration may be filed in a court that will enter an unlawful detainer judgment on a declaration instead of personal testimony after a default has been entered. The box under item 1d of the <i>Request for Entry of Default (Court Judgment)</i>, form 982(a)(6) would be checked if a court judgment on declarations were requested. Rule 388 of the California Rules of Court governing default judgments would be amended to allow the new form to be used when a party seeks a default judgment on declarations in an unlawful detainer case. Currently the rule only authorizes use of form 982(a)(6).</p> <p>Form 982(a)(6), the <i>Request for Entry of Default</i> form, would be revised to state that item 7, Memorandum of Costs, must be completed if a “money” judgment is requested. This item would not be completed in an unlawful detainer case when judgment for restitution of the premises and issuance of a writ of execution (for possession) is requested from the clerk under item 1e of the form. A separate application for additional relief demanded in the complaint such as back rent, damages, attorney fees, and costs must be filed following the default judgment for possession. (See Code of Civil Procedure section 1169.¹)</p>

¹ The separate application for additional relief may be obtained by asking for a court judgment (item 1d on the form) and submitting evidence to support the award at a “prove up hearing” or by a “prove up declaration,” (See Judicial Council form UD-116 specially prepared for use in unlawful detainer default situations.) Costs of suit are recoverable by filing a memorandum of costs after the trial court judgment. (See Cal. Rules of Court, rule 870(a)(2); Form MC-010, *Memorandum of Costs (Summary)* or Form MC-012 *Memorandum of Costs After Judgment, Acknowledgment of Credit, and Declaration of Accrued Interest*.)

The form also should be modified to reflect recent federal legislation renaming the “Soldiers and Sailors’ Civil Relief Act of 1940” to the “Servicemembers Civil Relief Act” (50 U.S.C. App. §§ 501—596) by amending the “Declaration of Nonmilitary Status” under item 8 to reflect this change.

Attachments

Rule 388 of the California Rules of Court would be amended, effective January 1, 2005, to read:

1 **Rule 388. Default judgments**

2 **(a) [Documents to be submitted]** A party seeking a default judgment on declarations
3 ~~shall~~ must use mandatory Judicial Council Form 982(a)(6). In an unlawful detainer
4 case, a party may in addition use optional Judicial Council form UD-116 when
5 seeking a court judgment on declarations. and shall The following must be included in
6 the documents filed with the clerk ~~the following~~:

7 (1) Except in unlawful detainer cases, a brief summary of the case identifying the
8 parties and the nature of plaintiff's claim;

9 (2) Declarations or other admissible evidence in support of the judgment requested;

10 (3) Interest computations as necessary;

11 (4) A memorandum of costs and disbursements;

12 (5) A declaration of nonmilitary status for each defendant against whom judgment is
13 sought;

14 (6) A proposed form of judgment;

15 (7) A dismissal of all parties against whom judgment is not sought or an application
16 for separate judgment against specified parties under Code of Civil Procedure section
17 579, supported by a showing of grounds for each judgment;

18 (8) Exhibits as necessary; and

19 (9) A request for attorney fees if allowed by statute or by the agreement of the parties.

20 **(b) [Fee schedule]** A court may by local rule establish a schedule of attorney fees to
21 be used by that court in determining the reasonable amount of attorney fees to be
22 allowed in the case of a default judgment.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): TELEPHONE NO.: _____ FAX NO. (Optional): _____ E-MAIL ADDRESS (Optional): _____ ATTORNEY FOR (Name): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: MAILING ADDRESS: CITY AND ZIP CODE: BRANCH NAME:	
PLAINTIFF (Name): DEFENDANT (Name):	
DECLARATION FOR DEFAULT JUDGMENT BY COURT (Unlawful Detainer—Code Civil Proc., § 585(d))	CASE NUMBER:

1. My name is (*specify*):
 - a. ☐ I am the plaintiff in this action.
 - b. I am
 - (1) ☐ an owner of the property
 - (2) ☐ a manager of the property
 - (3) ☐ an agent of the owner
 - (4) ☐ other (*specify*):
2. The property concerning this action is located at (*street address, apartment number, city, and county*):
3. Personal knowledge. I personally know the facts stated in this declaration and, if sworn as a witness, could testify competently thereto. I am personally familiar with the rental or lease agreement, defendant's payment record, the condition of the property, and defendant's conduct.
4. Agreement was ☐ written ☐ oral as follows:
 - a. On or about (*date*): _____ defendant (*name each*): _____
 - (1) agreed to rent the property for a ☐ month-to-month tenancy ☐ other tenancy (*specify*):
 - (2) agreed to pay rent of \$ _____ payable ☐ monthly ☐ other (*specify frequency*):
with rent due on the ☐ first of the month ☐ other day (*specify*):
 - b. ☐ Original agreement is attached (*specify*): ☐ to the original complaint.
☐ to the *Application for Immediate Writ of Possession*. ☐ to this declaration, labeled Exhibit 4b.
 - c. ☐ Copy of agreement with a declaration and order to admit the copy is attached (*specify*):
☐ to the *Application for Immediate Writ of Possession*. ☐ to this declaration, labeled Exhibit 4c.
5. ☐ Agreement changed.
 - a. ☐ More than one change in rent amount (*specify history of all rent changes and effective dates up to the last rent change*) on Attachment 5a (form MC-025).
 - b. ☐ Change in rent amount (*specify last rent change*). The rent was changed from \$ _____ to \$ _____, which became effective on (*date*): _____ and was made
 - (1) ☐ by agreement of the parties and subsequent payment of such rent.
 - (2) ☐ by service on defendant of a notice of change in terms pursuant to Civil Code section 827 (*check item 5d*).
 - (3) ☐ pursuant to a written agreement of the parties for change in terms (*check item 5e or 5f*).
 - c. ☐ Change in rent due date. Rent was changed, payable in advance, due on (*specify day*): _____.
 - d. ☐ A copy of the notice of change in terms is attached to this declaration, labeled Exhibit 5d.
 - e. ☐ Original agreement for change in terms is attached (*specify*): ☐ to the original complaint.
☐ to the *Application for Immediate Writ of Possession*. ☐ to this declaration, labeled Exhibit 5e.
 - f. ☐ Copy of agreement for change in terms with a declaration and order to admit the copy is attached (*specify*):
☐ to the *Application for Immediate Writ of Possession*. ☐ to this declaration, labeled Exhibit 5f.

PLAINTIFF (Name): _____ DEFENDANT (Name): _____	CASE NUMBER: _____
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6. Notice to quit.
- a. ☐ Defendant was served with a
- (1) ☐ 3-day notice to pay rent or quit

(2) ☐ 3-day notice to perform covenants or quit

(3) ☐ Other (specify): _____

(4) ☐ 3-day notice to quit

(5) ☐ 30-day notice to quit

(6) ☐ 60-day notice to quit
- b. ☐ The 3-day notice to pay rent or quit demanded rent due in the amount of (specify): \$ _____ for the rental period beginning on (date) _____ and ending on (date) _____.
- c. ☐ The total rent demanded in the 3-day notice under item 6b is different from the agreed rent in item 4a(2) (specify history of dates covered by the 3-day notice and any partial payments received to arrive at the balance) on Attachment 6c (form MC-025).
- d. ☐ The original or copy of the notice specified in item 6a is attached to (specify): ☐ the original complaint.
☐ this declaration, labeled Exhibit 6d. (The original or a copy of the notice MUST be attached to this declaration if not attached to the original complaint.)
7. Service of notice.
- a. The notice was served on defendant (name each):
- (1) ☐ personally on (date): _____

(2) ☐ by substituted service, including a copy mailed to the defendant, on (date): _____

(3) ☐ by posting and mailing on (date mailed): _____

b. ☐ A prejudgment claim of right to possession was served on the occupants pursuant to Code of Civil Procedure section 415.46.
8. Proof of service of notice. The original or copy of the proof of service of the notice in item 6a is attached to (specify):
- a. ☐ the original complaint.
- b. ☐ this declaration, labeled Exhibit 8b. (The original or copy of the proof of service MUST be attached to this declaration if not attached to the original complaint.)
9. Notice expired. On (date): _____ the notice in item 6 expired at the end of the day and defendant failed to comply with the requirements of the notice by that date. No money has been received and accepted after the notice expired.
10. The fair rental value of the property is \$ _____ per day, calculated as follows:
- a. ☐ (rent per month) x (0.03288) (12 months divided by 365 days)
- b. ☐ rent per month divided by 30
- c. ☐ other valuation (specify): _____
11. Possession. The defendant
- a. ☐ vacated the premises on (date): _____
- b. ☐ continues to occupy the property on (date of this declaration): _____
12. ☐ Holdover damages. Declarant has calculated the holdover damages as follows:
- a. Damages demanded in the complaint began on (date): _____
- b. Damages accrued through (date specified in item 11): _____
- c. Number of days that damages accrued (count days using the dates in items 12a and 12b): _____
- d. Total holdover damages ((daily rental value in item 10) x (number of days in item 12c)): \$ _____
13. ☐ Reasonable attorney fees are authorized in the lease or rental agreement pursuant to paragraph (specify): _____ and reasonable attorney fees for plaintiff's attorney (name): _____ are \$ _____.
14. ☐ Court costs in this case, including the filing fee, are \$ _____

PLAINTIFF (Name): _____ DEFENDANT (Name): _____	CASE NUMBER: _____
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15. ☐ Declarant requests a judgment on behalf of plaintiff for:

a. ☐ A money judgment as follows:

(1)	<input type="checkbox"/>	Past-due rent (<i>item 6b</i>)	\$	
(2)	<input type="checkbox"/>	Holdover damages (<i>item 12d</i>)	\$	
(3)	<input type="checkbox"/>	Attorney fees (<i>item 13</i>)*	\$	
(4)	<input type="checkbox"/>	Costs (<i>item 14</i>)	\$	
(5)	<input type="checkbox"/>	Other (<i>specify</i>):	\$	
(6)	TOTAL JUDGMENT			\$

* ☐ Attorney fees are to be paid by (name) only.

b. ☐ Possession of the premises in item 2 (*check only if a clerk's judgment for possession was **not** entered*).

c. ☐ Cancellation of the rental agreement. ☐ Forfeiture of the lease.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

_____ (TYPE OR PRINT NAME)	}	_____ (SIGNATURE OF DECLARANT)
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Summary of Exhibits

- 16. ☐ Exhibit 4b: Original rental agreement.
- 17. ☐ Exhibit 4c: Copy of rental agreement with declaration and order to admit the copy.
- 18. ☐ Exhibit 5d: Copy of notice of change in terms.
- 19. ☐ Exhibit 5e: Original agreement for change of terms.
- 20. ☐ Exhibit 5f: Copy of agreement for change in terms with declaration and order to admit copy.
- 21. ☐ Exhibit 6d: Original or copy of the notice to quit under item 6a (*MUST be attached to this declaration if it is not attached to original complaint*).
- 22. ☐ Exhibit 8b: Original or copy of proof of service of notice in item 6a (*MUST be attached to this declaration if it is not attached to original complaint*).
- 23. ☐ Other exhibits (*specify number and describe*):

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR (Name): _____ Insert name of court and name of judicial district and branch court, if any: PLAINTIFF: DEFENDANT:	FOR COURT USE ONLY
REQUEST FOR <input type="checkbox"/> ENTRY OF DEFAULT <input type="checkbox"/> CLERK'S JUDGMENT (Application) <input type="checkbox"/> COURT JUDGMENT	CASE NUMBER: _____

1. TO THE CLERK: On the complaint or cross-complaint filed

- a. on (date): _____
- b. by (name): _____
- c. ☐ Enter default of defendant (names): _____
- d. ☐ I request a court judgment under Code of Civil Procedure sections 585(b), (c), 989, etc., against defendant (names): _____

(Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code of Civil Procedure section 585(d).)

e. ☐ Enter clerk's judgment

- (1) ☐ for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply. (Code Civ. Proc., § 1169.)

☐ Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The Prejudgment Claim of Right to Possession was served in compliance with Code of Civil Procedure 445.46.

- (2) ☐ under Code of Civil Procedure section 585(a). (Complete the declaration under Code Civ. Proc., § 585.5 on reverse (item 5).)

- (3) ☐ for default previously entered on (date): _____

2. Judgment to be entered

	<u>Amount</u>	<u>Credits acknowledged</u>	<u>Balance</u>
a. Demand of complaint	\$	\$	\$
b. Statement of damages *			
(1) Special	\$	\$	\$
(2) General	\$	\$	\$
c. Interest	\$	\$	\$
d. Costs (see reverse)	\$	\$	\$
e. Attorney fees	\$	\$	\$
f. TOTALS	\$ _____	\$ _____	\$ _____

- g. **Daily damages** were demanded in complaint at the rate of: \$ _____ per day beginning (date): _____
 (* Personal injury or wrongful death actions; Code Civ. Proc., § 425.11)

3. ☐ (Check if filed in an unlawful detainer case) **LEGAL DOCUMENT ASSISTANT OR UNLAWFUL DETAINER ASSISTANT**
 information is on the reverse (complete item 4).

Date: _____



(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

**FOR COURT
USE ONLY**

- (1) ☐ Default entered as requested on (date): _____
- (2) ☐ Default NOT entered as requested (state reason): _____

Clerk, by _____, Deputy

SHORT TITLE:	CASE NUMBER:
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4. **LEGAL DOCUMENT ASSISTANT OR UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code, § 6400 et seq.)** A legal document assistant or unlawful detainer assistant ☐ did ☐ did not for compensation give advice or assistance with this form. (If declarant has received **any** help or advice for pay from a legal document assistant or unlawful detainer

a. Assistant's name: b. Telephone No.:

c. Street address, city, and ZIP:

d. County of registration:

e. Registration No.: e. Expires on (date):

5. ☐ **DECLARATION UNDER CODE OF CIVIL PROCEDURE SECTION 585.5** (Required for entry of default under Code Civ. Proc., § 585(a)) This action

- a. ☐ is ☐ is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).
b. ☐ is ☐ is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).
c. ☐ is ☐ is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. **DECLARATION OF MAILING (Code Civ. Proc., § 587)** A copy of this *Request for Entry of Default* was

a. ☐ **not mailed** to the following defendants whose addresses are **unknown** to plaintiff or plaintiff's attorney (names):

b. ☐ **mailed** first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:

(1) Mailed on (date): (2) To (specify names and addresses shown on the envelopes):

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and

Date:

(TYPE OR PRINT NAME)	(SIGNATURE OF DECLARANT)
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7. **MEMORANDUM OF COSTS** (Required if judgment requested) **Costs and disbursements** are as follows (Code Civ. Proc., § 1033.5):

- a. Clerk's filing fees \$
b. Process server's fees \$
c. Other (specify): \$
d. \$
e. **TOTAL** \$

f. ☐ Costs and disbursements are waived.

g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)	(SIGNATURE OF DECLARANT)
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8. ☐ **DECLARATION OF NONMILITARY STATUS** (Required for a judgment) No defendant named in item 1c of the application is in the military service so as to be entitled to the benefits of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. Appen. § 501 et seq.).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and

Date:

(TYPE OR PRINT NAME)	(SIGNATURE OF DECLARANT)
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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): TELEPHONE NO.: _____ FAX NO.: _____ ATTORNEY FOR (Name): _____ Insert name of court and name of judicial district and branch court, if any: PLAINTIFF: DEFENDANT:	FOR COURT USE ONLY <h1 style="margin: 0;">DRAFT 2</h1> <h1 style="margin: 0;">3/15/04</h1>
REQUEST FOR <input type="checkbox"/> ENTRY OF DEFAULT <input type="checkbox"/> CLERK'S JUDGMENT (Application) <input type="checkbox"/> COURT JUDGMENT	CASE NUMBER: _____

1. TO THE CLERK: On the complaint or cross-complaint filed

- a. on (date): _____
- b. by (name): _____
- c. ☐ Enter default of defendant (names): _____
- d. ☐ I request a court judgment under Code of Civil Procedure sections 585(b), (c), 989, etc., against defendant (names): _____

(Testimony required. Apply to the clerk for a hearing date, unless the court will enter a judgment on an affidavit under Code of Civil Procedure section 585(d).)

e. ☐ Enter clerk's judgment

- (1) ☐ for restitution of the premises only and issue a writ of execution on the judgment. Code of Civil Procedure section 1174(c) does not apply. (Code Civ. Proc., § 1169.)

☐ Include in the judgment all tenants, subtenants, named claimants, and other occupants of the premises. The Prejudgment Claim of Right to Possession was served in compliance with Code of Civil Procedure 445.46.

- (2) ☐ under Code of Civil Procedure section 585(a). (Complete the declaration under Code Civ. Proc., § 585.5 on reverse (item 5).)

- (3) ☐ for default previously entered on (date): _____

2. Judgment to be entered

	<u>Amount</u>	<u>Credits acknowledged</u>	<u>Balance</u>
a. Demand of complaint	\$	\$	\$
b. Statement of damages *			
(1) Special	\$	\$	\$
(2) General	\$	\$	\$
c. Interest	\$	\$	\$
d. Costs (see reverse)	\$	\$	\$
e. Attorney fees	\$	\$	\$
f. TOTALS	\$ _____	\$ _____	\$ _____

g. Daily damages were demanded in complaint at the rate of: \$ _____ per day beginning (date): _____

(* Personal injury or wrongful death actions; Code Civ. Proc., § 425.11)

3. ☐ (Check if filed in an unlawful detainer case) LEGAL DOCUMENT ASSISTANT OR UNLAWFUL DETAINER ASSISTANT information is on the reverse (complete item 4).

Date: _____



(TYPE OR PRINT NAME)

(SIGNATURE OF PLAINTIFF OR ATTORNEY FOR PLAINTIFF)

**FOR COURT
USE ONLY**

- (1) ☐ Default entered as requested on (date): _____
- (2) ☐ Default NOT entered as requested (state reason): _____

Clerk, by _____, Deputy

SHORT TITLE:	CASE NUMBER:
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4. **LEGAL DOCUMENT ASSISTANT OR UNLAWFUL DETAINER ASSISTANT (Bus. & Prof. Code, § 6400 et seq.)** A legal document assistant or unlawful detainer assistant ☐ did ☐ did not for compensation give advice or assistance with this form. (If declarant has received **any** help or advice for pay from a legal document assistant or unlawful detainer

a. Assistant's name: _____ b. Telephone No.: _____
 c. Street address, city, and ZIP: _____

d. County of registration: _____
 e. Registration No.: _____ e. Expires on (date): _____

5. ☐ **DECLARATION UNDER CODE OF CIVIL PROCEDURE SECTION 585.5** (Required for entry of default under Code Civ. Proc., § 585(a)) This action

a. ☐ is ☐ is not on a contract or installment sale for goods or services subject to Civ. Code, § 1801 et seq. (Unruh Act).
 b. ☐ is ☐ is not on a conditional sales contract subject to Civ. Code, § 2981 et seq. (Rees-Levering Motor Vehicle Sales and Finance Act).
 c. ☐ is ☐ is not on an obligation for goods, services, loans, or extensions of credit subject to Code Civ. Proc., § 395(b).

6. **DECLARATION OF MAILING (Code Civ. Proc., § 587)** A copy of this *Request for Entry of Default* was

a. ☐ **not mailed** to the following defendants whose addresses are **unknown** to plaintiff or plaintiff's attorney (*names*):
 b. ☐ **mailed** first-class, postage prepaid, in a sealed envelope addressed to each defendant's attorney of record or, if none, to each defendant's last known address as follows:
 (1) Mailed on (date): _____ (2) To (specify names and addresses shown on the envelopes): _____

I declare under penalty of perjury under the laws of the State of California that the foregoing items 4, 5, and 6 are true and correct.
 Date: _____

_____ (TYPE OR PRINT NAME)	_____ (SIGNATURE OF DECLARANT)
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7. **MEMORANDUM OF COSTS** (Required if money judgment requested) **Costs and disbursements** are as follows (Code Civ. Proc., § 1033.5):

a. Clerk's filing fees \$
 b. Process server's fees \$
 c. Other (specify): \$
 d. \$
 e. **TOTAL** \$ _____

f. ☐ Costs and disbursements are waived.
 g. I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
 Date: _____

_____ (TYPE OR PRINT NAME)	_____ (SIGNATURE OF DECLARANT)
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8. ☐ **DECLARATION OF NONMILITARY STATUS** (Required for a judgment) No defendant named in item 1c of the application is in the military service so as to be entitled to the benefits of the service members' Civil Relief Act (50 U.S.C. Appen. § 501 et seq.).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
 Date: _____

_____ (TYPE OR PRINT NAME)	_____ (SIGNATURE OF DECLARANT)
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